

In the United States Court of Federal Claims

No. 06-509 C

(E-Filed: February 8, 2007)

CHRISTOPHER R. PHILLIPS,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

ORDER

Before the court are defendant's Motion to Dismiss Plaintiff's Complaint (Def.'s Mot. or motion), plaintiff's Brief in Opposition to Defendant's Motion to Dismiss (Pl.'s Resp. or response), and defendant's Reply to Plaintiff's Brief in Opposition to Defendant's Motion to Dismiss (Def.'s Reply or reply). Plaintiff states in its response that its original complaint contains a number of deficiencies. Pl.'s Resp. 6-7. Plaintiff requests that the court allow it to address these deficiencies and to file an amended complaint. Id.

Rule 15(a) of the Rules of the Court of Federal Claims (RCFC) states that "[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served." RCFC 15(a) (2006). A motion to dismiss is not a responsive pleading. See Thompson v. Carter, 284 F.3d 411, 415 n.2 (2d Cir. 2005); Barbara v. N.Y. Stock Exch., 99 F.3d 49, 56 (2d Cir. 1996). Therefore, plaintiff may file an amended complaint.

The court DENIES, without prejudice, defendant's motion so that plaintiff may file an amended complaint. On or before Friday, March 2, 2007, plaintiff shall file its amended complaint. On or before Friday, March 23, 2007, defendant shall file its response. Defendant, if it so chooses, may file any appropriate motion at that time.

IT IS SO ORDERED.

s/ Emily C. Hewitt
EMILY C. HEWITT
Judge